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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884

No. 339. 72

WILLIAM D. MARVEL, PLAINTIFF IN ERROR,

vs.

EDWIN A. MERRITT, LATE COLLECTOR OF THE PORT OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 9, 1882.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, Greeting:

Because in the records and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court before you, between William D. Marvel, plaintiff, and Edwin A. Merritt, defendant, a manifest error hath happened, to the great damage of the said William D. Marvel, as by his complaint appears: We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October, eighteen hundred and eighty-two, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 16th day of September, in the year of our Lord one thousand eight hundred and eighty-two.

J. M. DEUEL, *Clerk.*

The foregoing writ is hereby allowed.

WM. J. WALLACE,
Circuit Judge.

2 [Endorsed:] 6077. U. S. Supreme Court. William D. Marvel, plaintiff in error, against Edwin A. Merritt, defendant in error. Writ of error. Stanley, Clarke & Smith, 160 Broadway, att'ys for pl'ff. N. Y., Sept. 16, 1882. Due service hereof is hereby admitted. S. L. Woodford, attorney for defendant in error. U. S. circuit court. Filed Sep. 16, 1882. Joseph M. Deuel, clerk.

UNITED STATES OF AMERICA, }
Southern District of New York, } *ss:*

I, Joseph M. Deuel, clerk of the circuit court of the United States of America for the southern district of New York, in the
3 second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from four to forty, inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of William D. Marvel, plaintiff in error, against Edwin A. Merritt, defendant in error, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this fifth day of October,

in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the United States the one hundred and seventh.

[SEAL.] JOSEPH M. DEUEL, *Clerk.*

4 *Summons.*

Supreme Court, City & County of New York.

WILLIAM D. MARVEL, Plaintiff,
against
EDWIN A. MERRITT, Defendant.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated November 26th, 1879.

DUDLEY F. PHELPS,
Plaintiff's Attorney.

Office and post-office address: No. 47 Wall street, New York city.

5 (Endorsed:) 6077. Wm. D. Marvel *vs.* E. D. Merritt. Dudley F. Phelps, att'y for pl'ff, 47 Wall St. Received, U. S. attorney's office, Dec. 2, 1879. Rec'd Nov. 26, '79.

6 The President of the United States of America to the judges of the supreme court of the State of New York, Greeting:

[L. S.] We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain cause commenced before you, against Edwin A. Merritt, defendant, by W. D. Marvel, plaintiff, do therefore command you that the record and proceedings in the said cause you distinctly and openly send to the said circuit court, at the city of New York, on the 19 day of December, 1879, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness Morrison R. Waite, Esquire, Chief Justice of the Supreme Court of the United States, the 16 day of December, 1879.

JOHN I. DAVENPORT, *Clerk.*

STEWART L. WOODFORD,
U. S. Attorney, Attorney for Defendant.

7 [Endorsed:] 6077. U. S. circuit court. W. D. Marvel *vs.* Edwin A. Merritt. Copy certiorari. Stewart L. Woodford, U. S. attorney, attorney for defendant. —— ——. Take notice that the within is a copy of a certiorari this day issued out of the circuit court

of the United States for the southern district of New York. New York, Dec. 16, 1879. Yours, Stewart L. Woodford, U. S. attorney, attorney for defendant. To D. F. Phelps, plaintiff's attorney. Due service of a copy of the within and of the above notice is hereby admitted. New York, Dec'r 16, 1879. D. F. Phelps, pl'ff's attorney.

8 United States Circuit Court, So. Dist. of New York.

WILLIAM D. MARVEL *vs.* E. A. MERRITT.

NEW YORK, *Dec. 27th*, 1879.

Hon. S. L. WOODFORD, *U. S. Attorney.*

SIR: Please to take notice that the following is the bill of particulars in the above-entitled suit, required by provisions of section 3012 of the Revised Statutes of the United States.

Very respectfully,

DUDLEY F. PHELPS,
Attorney for Pl'ff.

11 (Endorsed:) 6077. U. S. circuit court, so. dist. of N. Y. W. D. Marvel *vs.* E. A. Merritt. Bill of particulars. D. F. Phelps, att'y for pl'ff, 47 Wall St., New York. To Hon. S. L. Woodford, U. S. attorney. Received, U. S. attorney's office, Dec. 29, 1879.

12 Circuit Court of the United States, Southern District of New York.

WILLIAM D. MARVEL *against* EDWIN A. MERRITT.

The complaint of William D. Marvel, the plaintiff in the above-entitled action, shows:

I. That said plaintiff, at the dates mentioned in accompanying bill of particulars, which is made part of this complaint, made entry with the defendant, then and now collector of customs for the port and collection district of New York, of certain quantities of iron ores, and that said plaintiff, at the dates specified in the bill of particulars, paid to the defendant the amount of duties by him exacted.

II. That said iron ore was imported from the foreign ports specified in the bill of particulars and by the vessels named in
13 said bill of particulars, and that the invoices of said iron ore were dated as set forth in said bill of particulars.

III. That the cause of this action accrues to the plaintiff by the action of the defendant in assessing the duties upon the above-described importations of iron ore illegally, at the rate of twenty per centum ad valorem, when, in fact, said ore, under the provisions of section 2516 of the Revised Statutes of the United States, were subject only to a duty of ten per centum ad valorem as an unmanufactured article, and the plaintiff is, therefore, entitled to recover from said defendant the difference between the amount of duties paid at the rate of twenty per centum ad valorem and the amount of duties legally accruing at the rate of ten per centum ad valorem, which difference is set forth in detail in the bill of particulars.

IV. That the requirements of the statutes in regard to pro-
14 testing to the collector and appealing to the Secretary of the Treasury have been complied with by the plaintiff at the respective dates set forth in the bill of particulars, and within ninety days prior to the commencement of this action the Secretary of the Treasury rendered his decisions upon the plaintiff's appeals to him, in which decisions the action of the collector was sustained.

V. Wherefore plaintiff demands judgment against the defendant for the sum of fifty-five hundred and forty-six dollars and eighty cents ($85,546\frac{80}{100}$), with interest from the dates of payment of the same, as set forth in the bill of particulars, together with the costs of this action.

WM. D. MARVEL.

SOUTHERN DISTRICT OF NEW YORK, }
City and County of New York, } *ss:*

15 William D. Marvel, being duly sworn, says that the fore-

going complaint is true, of his own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

WM. D. MARVEL.

Sworn to before me, this 5th day of January, 1880.

[SEAL.] JOHN McCLURE,
Notary Public, N. Y. Co.

(Endorsed:) United States circuit court, so. dist. of New York. 6077. William D. Marvel *vs.* Edwin A. Merritt. Complaint. Dudley F. Phelps, att'y for pl'ff. To Hon. S. L. Woodford, U. S. attorney, att'y for def't. Received, U. S. attorney's office, Jan'y 5, 1880.

16 United States Circuit Court, Southern District of New York.

WILLIAM D. MARVEL *versus* EDWIN A. MERRITT, Collector, etc.

The answer of the defendant herein, by Stewart L. Woodford, his attorney, to the complaint of the plaintiff in the above-entitled action.

I. He admits he was, at the times in said complaint mentioned, collector of the port of New York, and in such official capacity received payment from the plaintiff for and on account of duties due to the United States, under the laws thereof, upon certain importations of merchandise imported by said plaintiff into the port of New York from foreign countries.

II. He alleges that any and all moneys received by him from plaintiff, at the times in said complaint mentioned, were paid by said plaintiff as a debt due by him to the United States, and not otherwise; and were received by defendant by virtue of his office as said collector and under the direction of the Secretary of the Treasury, and for and on account of the United States, and were forthwith thereafter, and before the commencement of this action, or the service of any protest, paid into the Treasury of the United States; and that the amount of said moneys so received from plaintiff were the amounts due from him to the United States, according to the rate of duty imposed by law upon the several articles of merchandise by him imported and assessed with duty, and no other sums than duties regularly assessed and ascertained and liquidated, according to law, upon the plaintiff's import entry thereof were collected or received by defendant from the plaintiff.

III. And defendant, further answering, denies that he has at this time sufficient information to form a belief as to the precise description of the merchandise contained in the several packages referred to in the said complaint, by the marks and numbers and description there given, except in so far as to state, and defendant herein answering doth aver and state, that said merchandise was not dutiable, according to the laws of the United States, at the rates specified in the complaint.

IV. And defendant, further answering, admits that plaintiff filed with defendant certain protests, but he denies that he has sufficient

information to form a belief as to whether, upon the importations in question, protests and appeals were made by the plaintiff conformable to the laws of the United States, and defendant leaves plaintiff to make such proof thereof as he may be advised.

V. And as to any other allegations in said complaint contained, not hereinbefore fully answered or admitted, defendant denies the same, and each thereof, and leaves the plaintiff to make such proof thereof as he may be advised.

Wherefore defendant demands judgment—that the complaint be dismissed with costs.

STEWART L. WOODFORD,
United States Attorney, Attorney for Defendant.

17 SOUTHERN DISTRICT OF NEW YORK, } ss:
City and County of New York, }

Edwin A. Merritt, being duly sworn, says that he is the defendant above named; that the foregoing answer is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

E. A. MERRITT.

Sworn to before me, this 7 day January, 1880.

GEO. HILLIER,
Notary Public, New York County.

[Endorsed:] 6077. U. S. circuit court, southern district of New York. William D. Marvel *vs.* Edwin A. Merritt, collector, etc. Copy. Answer. Stewart L. Woodford, United States attorney, attorney for defendant. Due service of a copy of the within copy [of] answer is hereby admitted. New York, Jan'y 13, 1880. D. F. Phelps, plaintiff's attorney. To D. F. P., plaintiff's attorney.

18 At a term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Thursday, the third day of November, in the year of our Lord one thousand eight hundred and eighty-one.

Present: The Honorable Nathaniel Shipman, circuit judge.

WILLIAM D. MARVEL }
vs. } 6077.
EDWIN A. MERRITT. }

On motion of Stephen Clarke, Esq., of counsel for the plaintiff in the above-entitled action—

Ordered, Trial.

Jurors sworn: James Aitken, Robert Cable, John B. Radley, Daniel L. Cobb, John D. Griffin, Thos. R. Armstrong, Caleb T. Ames, Thos. Burton, Thos. H. Newman, Robert Armstrong, Fred'k C. Richardson, Horace A. Foote.

Mr. Clarke opens the case on the part of the plaintiff.

Evidence for the plaintiff.

William D. Marvel, sworn.

19 Pl'ff's entries, invoices, protests, and appeals.

Mr. A. B. Herrick, ass't U. S. att'y, of counsel for the defendant, moves that the court direct the jury to find a verdict for the defendant.

The court directs the jury to find a verdict for the defendant.

The jury say that by direction of the court they find a verdict for the defendant; and so say they all.

On motion of Mr. Clark, ordered that the plaintiff have a stay of proceedings for thirty days within which to prepare and serve a bill of exceptions herein.

Prior to the rendering and recording of the verdict, Mr. Clarke excepts to the ruling of the court in directing jury to find a verdict for the defendant.

20 *Judgment.*

United States Circuit Court, Southern District of New York.

WILLIAM D. MARVEL
vs. } 6077.
EDWIN A. MERRITT.

The issues in this action having been brought on for trial before Mr. Judge Shipman and jury, at a circuit court of the October term, 1881, and the issues having been tried, and a verdict for the defendant having been duly rendered on the third day of November, 1881, and his costs having been adjusted at $48\frac{81}{100}$;

Now, on motion of Stewart L. Woodford, United States attorney, for defendant—

It is adjudged that the defendant have judgment against the plaintiffs upon the issues in this action, and that he recover the sum of $48\frac{81}{100}$, his taxed costs, and have execution therefor.

Judgment signed this 24th day of August, 1882.

JOHN A. SHIELDS,
Deputy Clerk.

21 [Endorsed:] United States circuit court. William D. Marvel *vs.* Edwin A. Merritt. Judgment roll. Stewart L. Woodford, United States attorney, for defendant. Costs, $48\frac{81}{100}$. U. S. circuit court. Filed Aug. 24, 1882. Joseph M. Deuel, clerk.

22 *Bill of Exceptions.*

Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

WILLIAM D. MARVEL *against* EDWIN A. MERRITT.

Afterwards, to wit, on the second day of November, 1881, at the city of New York, to wit, on the seventeenth day of October, 1881, before the Honorable Nathaniel Shipman, district judge of the United States for the State of Connecticut, appointed to hold the said circuit court according to the form of the statute in such case made and provided, the aforesaid issue, so joined as between the said parties

as aforesaid, as by the record more fully appears, came on to be tried by a jury, duly empanelled and sworn for that purpose,
23 the said plaintiff being represented by Mr. Dudley F. Phelps and Mr. Stephen G. Clarke, and the said defendant by A. B. Herrick.

The only witness in this case was introduced in behalf of plaintiff, whose testimony showed that in the years 1878 and 1879 he imported at the port of New York several shipments of iron ore in a crude state, upon which the collector of customs, the defendant, assessed a duty of twenty per cent. ad valorem; that this duty was paid under protest, the protests being in form as follows:

I hereby protest against the exaction of 20 per cent. duty on my entry of iron ore, per ——, from —— duty paid, claiming that the said ore is an unmanufactured article, subject to a duty of 10 per cent. under section 2516, R. S.

I pay the duty exacted by you to get possession of my
24 goods, and shall hold you liable for excess of duty.

These protests were made in due time. Appeals to the Secretary of the Treasury were duly taken, and this suit to recover the overpayment brought within the time limited by law.

The evidence showed that the ores in question, in different importations, contained from forty-eight to sixty-two per cent. of iron, three to four per cent. of manganese, one to five per cent. of silica, a little aluminum, a little lime, a trace of sulphur and of phosphorus; that there was no absolute proportion of any of the materials in any given sample of ore, and that the iron was combined with oxygen and the other substances, the iron having only its proportion, the result being one conglomerate mass called ore.

25 These ores were and are imported only for their metallic value for smelting; that the peculiar properties of these ores make available a great deal of domestic ore, making a result in pig-iron, which — not be accomplished by the use of domestic ore alone, and their value are thus enhanced by the mixture with these ores.

The evidence tended to show that, while a few samples of ores were imported at Plattsburgh from Canada for trial in a forge there to determine whether it would do to manufacture them in Canada, and another lot at Cleveland, that down to the latter part of 1873 iron ores were only imported as samples, and it is only within two or three years that their importation has risen into mercantile importance.

26 It further appeared that the ores in question were not bituminous, and that these are known articles of commerce, which are both mineral and bituminous.

Counsel for the plaintiff then asked this question of the witness, shown to have the necessary means of knowledge: "State, if you know, whether or not there is a distinction commercially between ores and minerals; and, if so, state that distinction.

Objected to by counsel for defendant. The court excluded the question, and counsel then and there duly excepted, and the exception was allowed.

The witness was then further examined as follows:

Q. Are there mineral substances, to your knowledge, that are articles of commerce?

A. A great many.

Q. And known commercially as such?

Objected to by counsel for defendant. Excluded. The
27 plaintiff then and there duly excepted to this ruling.

By Mr. CLARKE:

Q. State whether or not ores similar to those samples produced by you are known among large dealers and importers in this country, and dealt in and bought and sold as mineral substances.

Objected to by counsel for defendant. Objection sustained. Whereupon counsel for plaintiff duly excepted, and the exception was allowed.

Q. Under what name is that article bought and sold?

A. As iron ore, and nothing else.

Q. State, if you know, whether or not there is a distinction, commercially, between iron ores similar to your samples and mineral substances which are articles of commerce in this country.

28 Objected to by counsel for defendant, on the ground that in this case there is not a question of commercial designation.

Question excluded. Counsel then and there duly excepted, and exception was allowed.

Plaintiff's counsel then made offer of proof as follows:

That iron ores, similar ores to these in question, are dealt in by importers and large dealers as a class separate and distinct from mineral substances, and that commercially, by such importers and dealers, they are not bought and sold among the class of mineral substances.

To which offer of proof defendant's counsel objected, upon the ground that such testimony would be immaterial, incompetent, and irrelevant.

The court excluded such testimony; to which ruling counsel for plaintiff duly excepted, and the exception was then and
29 there allowed.

Plaintiff's counsel further made offer of proof that ores and metals are treated scientifically as distinct from minerals and from each other, and that the same distinction exists commercially.

To which offer of proof defendant's counsel objected, upon the ground that such testimony would be immaterial, incompetent, and irrelevant.

The court excluded such testimony; which ruling counsel for plaintiff duly excepted, and the exception was then and there allowed.

This witness, being cross-examined, testified further, that the articles of chief value in this ore was iron, and that the ore in question was a metallic substance, and that a metal is not a min-

eral, nor made out of a mineral; and, in reply to a question by a juror, that it was not known as a mineral ore, but was known as iron ore and always bought and sold as iron ore.

Whereupon the plaintiff rested his case and no evidence was offered in behalf of the defendant.

Counsel for plaintiff moved the court to direct a verdict in favor of the plaintiff; which motion was denied, and counsel for plaintiff then and there duly excepted, and the exception was then and there allowed.

Whereupon the court, on motion of counsel for defendant, instructed the jury, there being no disputed question of fact in the case upon the testimony as admitted, to return a verdict in favor of the defendant, to which ruling and direction counsel for plaintiff then and there duly excepted, and the exception was then and there allowed by the court.

And because none of the said exceptions so offered and made to the rulings, instructions, and decisions of the court do appear upon the record of the said trial, therefore, on the prayer of the said plaintiff, by his counsel, the said judge has to this bill of exceptions put his seal, as of the second day of November, 1881.

N. SHIPMAN, *Judge*. [L. S.]

(Endorsed:) U. S. circuit court, so. dist. of New York. William D. Marvel, plaintiff, against Edwin A. Merritt, defendant. Bill of exceptions. Dudley F. Phelps, attorney for plaintiff, New York. U. S. circuit court. Filed Dec. 14, 1881. Joseph M. Deuel, clerk.

Assignment of Error.

Supreme Court of the United States.

WILLIAM D. MARVEL, Plaintiff in Error, *vs.* EDWIN A. MERRITT.

In error to the Circuit Court of the United States, Southern District of New York.

And now comes the plaintiff in error, by Stanley, Clarke and Smith, his attorneys, and says that in the record and proceedings in the above cause there is manifest error, in this:

First. That the court directed a verdict for defendant.

Second. That the court did not direct a verdict for the plaintiff.

Third. That the court erred in its construction of the section of the Revised Statutes of the United States upon which this action is based.

New York, October 2, 1882.

STANLEY, CLARKE & SMITH,
Attorneys for Plaintiff in Error.

Endorsed: U. S. circuit court. William D. Marvel *vs.* Edwin A. Merritt. Assignment of error. Stanley, Clarke & Smith, att'ys for pl'ff. Service of a copy of the within assignment of error is hereby admitted, this 4th day of October, 1882. S. L. Woodford, attorney for def't in error. U. S. circuit court. Filed Oct. 4, 1882. Joseph M. Deuel, clerk.

35 Supreme Court of the United States.

WILLIAM D. MARVEL, Plaintiff in Error,

vs.

EDWIN A. MERRITT, Defendant in Error.

And afterwards, to wit, on the first day of said term, before the Justices of the Supreme Court of the United States, the said defendant in error, by Stewart L. Woodford, his attorney, comes here into court and says that there is no error, either in the record or proceedings aforesaid, or in the giving of the judgment aforesaid.

And he prays that the said Supreme Court, before the justices thereof now here, may proceed to examine as well the records and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid in form aforesaid given may be in all things affirmed, &c.

S. L. WOODFORD,
Attorney for Defendant in Error.

36 (Endorsed:) 6077. U. S. Supreme Court. William D. Marvel, plaintiff in error, *versus* Edwin A. Merritt, defendant in error. Joinder in error. Stewart L. Woodford, United States attorney, attorney for defendant in error. To Stanley, Clarke & Smith, attorneys for plaintiff in error. Due service of a copy of the within is hereby admitted. New York, October 4, 1882. Stanley, Clarke & Smith, attorneys for plaintiff in error. U. S. circuit court. Filed Oct. 4, 1882. Joseph M. Deuel, clerk.

37 *Bond for Damages and Costs.*

Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

WILLIAM D. MARVEL *vs.* EDWIN A. MERRITT.

Know all men by these presents, that we, William D. Marvel, as principal, and Edward N. Hill, are held and firmly bound unto the above-named Edwin A. Merritt in the sum of two hundred and fifty dollars, to be paid to the said Edwin A. Merritt; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the fifteenth day of September, in the year of our Lord one thousand eight hundred and eighty-two.

Whereas the above-named William D. Marvel has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named William D. Marvel shall prosecute his said writ to effect, and answer all damages and costs if [he] fail to make his plea good, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

WM. D. MARVEL. [L. S.]
EDWARD N. HILL. [L. S.]

Sealed and delivered, and taken and acknowledged, this 15 day of Sept., 1882, before me—

[L. S.] A. M. DUNBAR,
Notary Public.

38 UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

Edward N. Hill, being duly sworn, doth depose and say: That he resides at 114 West 47th st., New York city; that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

EDWARD N. HILL.

Sworn to this 15th day of Sept., A. D. 1882, before me—

[L. S.] A. M. DUNBAR,
Notary Public.

[Endorsed:] U. S. circuit court. William D. Marvel vs. Edwin A. Merritt. Bond for damages and costs on writ of error. Approved Sept. 15, 1882. Wm. J. Wallace, U. S. circuit court. Filed Sept. 16, 1882. Joseph M. Deuel, clerk.

39 UNITED STATES OF AMERICA, ss:

To Edwin A. Merritt, Greeting:

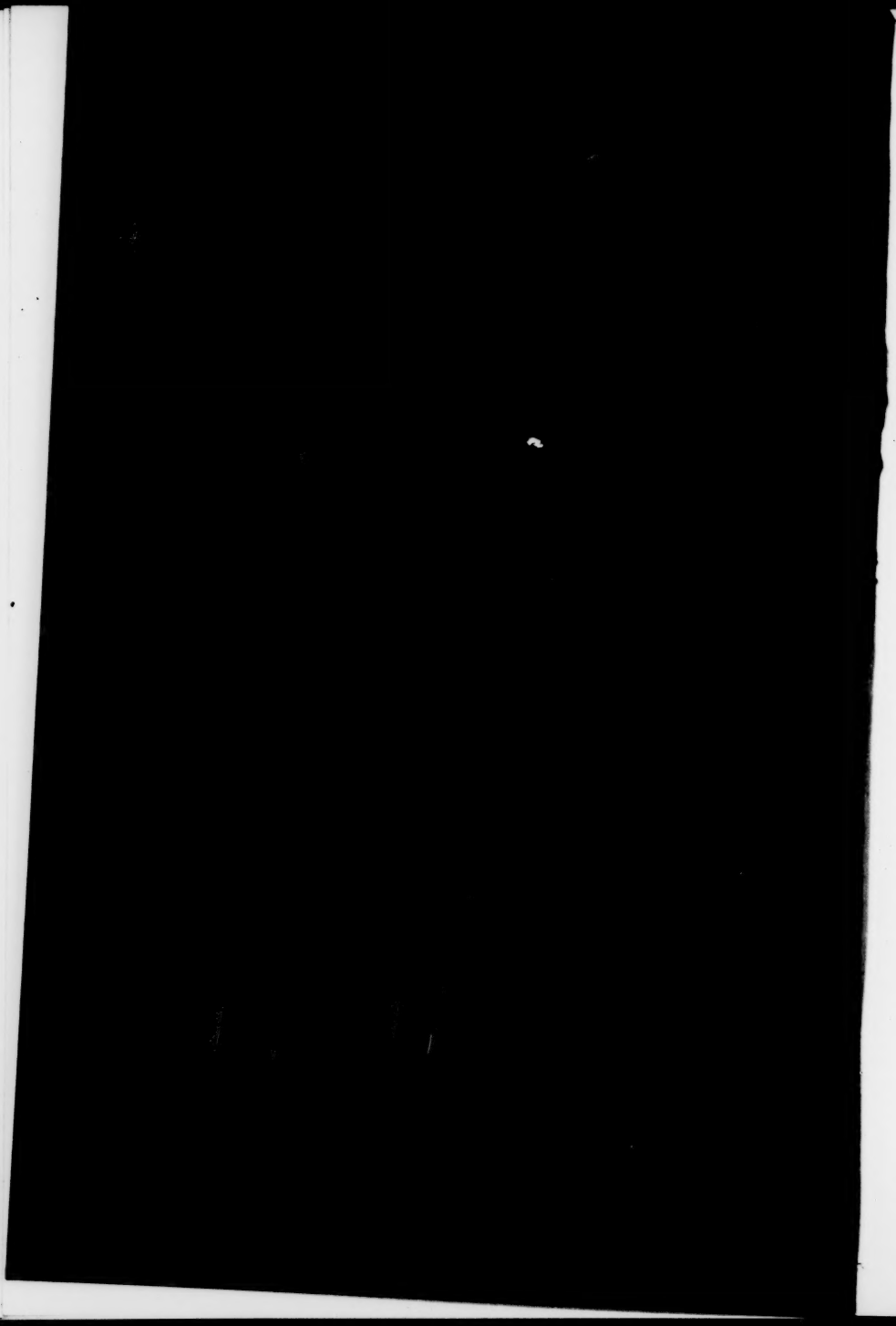
You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October, eighteen hundred and eighty-two, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein William D. Marvel is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated New York, September 15, 1882.

WM. J. WALLACE,
Circuit Judge.

40 [Endorsed:] 6877. U. S. Supreme Court. William D. Marvel, plaintiff in error, against Edwin A. Merritt, defendant in error. Citation. New York, Sept. 16, 1882. Due service of this writ & citation is hereby admitted. S. L. Woodford, Jr., attorney for defendant in error. U. S. circuit court. Filed Sep. 16, 1882. Joseph M. Deuel, clerk.

Endorsed on cover: S. New York C. C. U. S. No. 3339. William D. Marvel, plaintiff in error, vs. Edwin A. Merritt, late collector of the port of New York. Filed 9th October, 1882.



Supreme Court of the United States.

WILLIAM D. MARVEL,
Plaintiff in Error,

vs.

EDWIN A. MERRITT, late Collector of the Port of New York.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

Brief for Plaintiff in Error.

This is a writ of error from a judgment rendered in favor of defendant in error by the Circuit Court of the United States for the Southern District of New York, on 24th day of August, 1882, in a suit brought by William D. Marvel against Edwin A. Merritt, to recover $5,546.80, being the difference between the amount exacted by the defendant as Collector of the Port of New

NOTE.—In the transcript of record as printed there appear typographical errors, which are apparent upon a comparison of the print with the manuscript record in New York. On page 10, line 32, the blank should be filled up with the word "could," and on the same page, line 42, the word "these" should be "there."

Oct 14/85 Correct.
(signed) S. B. Clarke
Asst U.S. Atty

York, as duties at the rate of 20 per centum *ad valorem* upon a number of importations of IRON-ORE made by the plaintiff, instead of at the rate of ten per centum *ad valorem*, the amount which, the plaintiff claims, was alone lawfully collectable thereon, and also to recover interest upon said over-payments from the several dates thereof, as is more fully set forth in the complaint (see Transcript of Record, page 6).

The Questions Involved.

These are fully set forth in the pleadings, and succintly stated are:

First.—The plaintiff was assessed and compelled to pay twenty per centum *ad valorem* duty on his importations of IRON-ORE, as coming within the provision in Schedule M, Sundries, section 2504, Revised Statutes, for "*mineral and bituminous substances in a crude state.*"

Is IRON-ORE "*a mineral and bituminous substance in a crude state*," as matter of law, so as to justify the Court below in refusing to allow evidence to go to the jury tending to show that it is not?

Second.—The plaintiff claimed, as set forth in his complaint, that his importations of IRON-ORE were dutiable upon a proper classification as "*an unmanufactured article*," *and subject only to a duty of ten per centum ad valorem, under the provisions of section* 2516 *of the Revised Statutes of the United States;* but notwithstanding such the plaintiff was compelled to pay twenty per centum ad valorem duty, in order to get possession of his goods.

Is it true that IRON-ORE cannot be classed among "all raw or unmanufactured articles, not herein enumerated or provided for," within § 2516 R. S., as matter

of law, so as to justify the Court below in refusing to allow evidence to go to the jury tending to show that it is within that section.

Third.—The foregoing questions are thus resolved into one question as between the plaintiff and the defendant, viz.:

Was the Court below justified in ruling, as it substantially did, that as matter of law IRON-ORE is "*a mineral and bituminous substance in a crude state*," provided for in § 2504, sched. M, *sundries*, and that "IRON-ORE" is not provided for in section 2516, which provides that "there shall be levied, collected and paid on the importation of all raw or unmanufactured articles, not herein enumerated or provided for, a duty of ten per centum *ad valorem*"?

All these questions and the manner in which they were raised are discussed in the following brief:

The following are the appellant's assignment of errors (p. 12).

ASSIGNMENT OF ERRORS.

First.—That the Court directed a verdict for the defendant (Rec., p. 12):

Second.—That the Court did not direct a verdict for the plaintiff (Rec., p. 12).

Third.—That the Court erred in its construction of the sections of the Revised Statutes of the United States upon which this action is based.

The errors relied upon in relation to the admission or rejection of evidence, and the charges and instructions given or refused, are as follows:

(1.) The Court erred in excluding the following ques-

tion, which was asked by plaintiff's counsel of the plaintiff, as a witness (Rec., p. 10):

"Q. State, if you know, whether or not there is a distinction commercially between ores and minerals, and, if so, state that distinction."

(2.) The Court erred in excluding the second of the following questions, which were asked by plaintiff's counsel of the plaintiff, as a witness (Rec., p. 11):

"Q. Are there mineral substances, to your knowledge, that are articles of commerce?

"A. A great many.

"Q. And known commercially as such?"

(3.) The Court erred in excluding the following question, which was asked by plaintiff's counsel of the plaintiff, as a witness (Rec., p. 11):

"Q. State whether or not ores similar to those samples produced by you are known among large dealers and importers in this country, and dealt in and bought and sold as mineral substances."

(4.) The Court erred in excluding the second of the following questions, which were asked by plaintiff's counsel of the plaintiff, as a witness (Rec., p. 11):

"Q. Under what name is that article bought and sold?

"A. As iron-ore, and nothing else.

"Q. State, if you know, whether or not there is a distinction commercially between iron-ores similar to your samples and mineral substances which are articles of commerce in this country."

This last question was objected to by counsel for defendant, on the ground that in this case there is not a question of commercial designation.

(5.) The Court erred in excluding the testimony offered by the plaintiff as follows (Rec., p. 11):

"Plaintiff's counsel then made offer of proof as follows: That IRON-ORES, similar ores to these in ques-

tion, are dealt in by importers and large dealers as a class separate and distinct from mineral substances, and that commercially, by such importers and dealers, they are not bought and sold among the class of mineral substances."

(6.) The Court erred in excluding the testimony offered by the plaintiff as follows (Rec., p. 11):

"Plaintiff's counsel further made offer of proof that ores and metals are treated scientifically as distinct from minerals and from each other, and that the same distinction exists commercially."

Brief of the Argument.

This action was brought by the plaintiff against the defendant as Collector of Customs at the Port of New York, to recover certain moneys which the plaintiff paid under compulsion, to get possession of his goods, to the defendant, contrary, as the plaintiff claims, to law, as excessive duties upon the plaintiff's importations of IRON-ORE, and which moneys the plaintiff paid in each and every case under protest and appeal in due and legal form.

The defendant assessed duty on the plaintiff's importations of IRON-ORE under classification as "a mineral and bituminous substance in a crude state, not otherwise provided for," and thus erroneously made IRON-ORE to correspond, in its classification, to the requirements of section 2504 R. S., Schedule M, Sundries, and under such classification the defendant demanded and received from the plaintiff duty thereon at the rate of twenty per centum *ad valorem*.

The plaintiff claimed and duly set forth in his protests and appeals that IRON-ORE is "*an unmanufactured article*," and subject, accordingly, to proper classification as such, and subject to only ten per centum

ad valorem duty under the provision for such in section 2516 Revised Statutes.

In this argument it is not intended to exhaust scientific authorities in support of the plaintiff's cause of action, for it is submitted that, in view of repeated decisions, *all questions as to classification of articles for duty under the customs laws must be decided upon the commercial appellations given to them;* and, that *in case of serious ambiguity in the language of the act, or doubtful classification of the articles, the construction is to be in favor of the importer.*

Roosevelt *vs.* Maxwell, 3 Blatchford, 393.
The U. S. *vs.* 112 Casks of Sugar, 8 Peters, 279.
200 Chests of Tea, 9 Wheaton, 438, &c.
Powers *vs.* Barney, 5 Blatchford, 202, &c.
Barlow *vs.* United States, 7 Pet., 404
Elliot *vs.* Swartwout, 10 Pet., 137.
Curtis *vs.* Martin, 3 How., 106; *Id.*, Bank's ed., *note.*
Lawrence *vs.* Allen, 7 How., 785, 791.
DeForest *vs.* Lawrence, 13 How., 274.
Arthur *vs.* Morrison, 96 U. S., 108.
Arthur *vs.* Lahey, *Id.*, 112.
May *vs.* Simmons, 4 Fed. Rep., 499.
Rheimer *vs.* Maxwell, 3 Blatchf., 124.
Lennig *vs.* Maxwell, *Id.*, 124.

On the trial of this case it was proved (Rec., p. 10) that "*these ores were and are imported only for their metallic value for smelting;* that *the peculiar properties of these ores make available a great deal of domestic ore, making a result in pig iron, which could not be accomplished by the use of domestic ore alone, and their values are thus enhanced by the mixture with these ores—the ores which are imported.*

It was also shown (p. 10) that *the ores in question were not "bituminous," therefore that none of the IRON-ORE in question, imported by the plaintiff, could be properly classified as "a mineral and bituminous substance in a crude state."*

It was also shown (p. 10) that "*there are known articles of commerce* which *are both mineral and bituminous.*"

It was offered by the plaintiff to prove that there is a distinction, commercially, between "*ores*" and "*minerals*"; and, upon the plaintiff's counsel asking the witness this question, viz.: "*State, if you know, whether or not there is a distinction, commercially, between ores and minerals; and, if so, state that distinction,*" the question was objected to and excluded, and exception duly taken (p. 10).

It is submitted that the Court erred in excluding the question, in that it was material and important and would have shown the fact that *there is a commercial significance to the term* "ORE," *and a commercial significance to the term* "MINERAL," and that they are *entirely distinct from each other.*

It was shown (p. 11) that there are a great many "mineral substances" that are articles of commerce, but when the plaintiff's counsel asked the witness—"and known commercially as such?" the counsel for defendant objected to the question, which objection was sustained by the Court.

It is submitted that the Court erred in excluding the question, in that it was material and important.

It was shown that the article in question (the ore imported by this plaintiff) was bought and sold as IRON-ORE, and nothing else (p. 11).

Plaintiff's counsel made offer of proof as follows (p. 11), viz.:

"That IRON-ORES, *similar ores to these in ques-*
"*tion, are dealt in by importers and large dealers as*

"*a class separate and distinct from mineral sub-*
"*stances, and that commercially, by such importers*
"*and dealers, they are not bought and sold among the*
"*class of mineral substances.*"

The defendant's counsel objected to such offer of proof and the Court excluded such testimony.

Plaintiff's counsel further made offer of proof (p. 11), viz.:

"*That ores and metals are treated scientifically as*
"*distinct from minerals and from each other, and*
"*that the same distinction exists commercially.*"

The defendant's counsel objected, and the Court excluded such testimony.

It is submitted that even if the scientific distinction was immaterial, the commercial distinction, "although it may not be scientifically correct," was a material and important matter in this case—and therefore the Court erred in excluding the evidence (U. S. *vs.* 112 Casks of Sugar, 8 Peters, 279).

But the offer was made to prove, both scientifically and commercially.

It is submitted at this point, that it was proven, and undisputed in any manner or form (p. 10, fol. 26), that *the ores in question were not* "*bituminous,*" and thus, none of the IRON-ORE in question, was "a mineral and bituminous substance," in any state, crude or otherwise—and upon such proof the Court erred in directing a verdict for the defendant, and in not directing a verdict for the plaintiff.

It may be further seen that the *defendant's counsel*, in cross examining the witness, *brought out, and thus proved for the plaintiff* (p. 11), "*that the article*
"*of chief value in this* ORE *was iron, and that the* ORE
"*in question was a metallic substance*, and that a
"metal is not a mineral, *nor made out of a mineral.*"

The defendant's counsel thus brought out and proved the plaintiff's claim in the very important point, viz.,

that IRON ORE is *a metallic or metalliferous substance*, and, it is submitted, that *the* SUBSTANCE ("the essential or material part."—Worcester Unabridged Dictionary) *of* IRON-ORE *is metallic or metalliferous —ergo—* "the essential or material part" of IRON-ORE cannot be "mineral and bituminous"; and it is further submitted that upon this point of fact, the Court erred in directing a verdict for the defendant, and in not directing a verdict for the plaintiff.

It may be seen (p. 12) that the counsel for plaintiff moved the Court to direct a verdict for the plaintiff, which motion was denied; counsel for plaintiff duly excepted; exception allowed. And it may also further be seen that "*The Court, on motion of counsel for defendant, instructed the jury, there being no disputed question of fact in the case upon the testimony as admitted, to return a verdict in favor of the defendant, to which ruling and direction, counsel for plaintiff then and there duly excepted, and the exception was then and there allowed by the Court.*"

The defendant did not make any proof that "IRON-ORE" is "a mineral and bituminous substance in a crude state."

The PLAINTIFF DID PROVE (p. 10, fol. 26) that "IRON-ORE" has *no* "*bituminous*" properties whatever, and consequently, "IRON ORE" *is not* "*a mineral and bituminous substance*," and therefore it is submitted that the Court erred in directing a verdict for the defendant, and in not directing a verdict for the plaintiff.

The PLAINTIFF CLAIMED in the complaint (Record, p. 6), that IRON ORE is "*an unmanufactured article*," and, as such, is subject to a duty of ten per centum *ad valorem* under and according to the provision in Section 2516 of the Revised Statutes, and THE PLAINTIFF PROVED (Rec., p. 10), that the ores imported by the plaintiff, and which ores are the "*articles of commerce*" in question in this case, *are used for smelting*, and *are imported*

only for their metallic value, thus proving that IRON-ORE, and the particular IRON-ORE imported by the plaintiff, is the "*unmanufactured article*" of commerce, *used for the manufacture of iron*, by the process *of smelting*, and that such IRON-ORE (such article) (p. 11) is *always bought and sold* "*as* IRON-ORE, *and nothing else*."

It is submitted that the plaintiff fully proved his claim, that the IRON-ORE in question is an "*unmanufactured article*." As *no evidence* to the contrary was offered in behalf of the defendant, it is submitted that the Court erred in not directing a verdict for the plaintiff.

Here it may be remarked, that, in the growth of science and art, and the new adaptations to which substances are applied, that the nomenclature of articles of commerce is not always in accord with the nomenclature of scientific authorities; and that the present scientific nomenclature of substances is one of constant growth during past centuries.

In Lippincott's Ed. Chambers' Information for the People, vol. 1, p. 353, it may be seen that "*The term mineral is somewhat varied and indefinite in its application.*"

The present nomenclature, as applied to substances, though it is being constantly enlarged, is upon the foundation established by the French Academy of Science in 1787.

In Regnault's Elements of Chemistry, Ed. Clark & Hesser, Philadelphia, 1853, vol. 1, p. 63, it may be seen that, "*Unfortunately, the spirit of this nomen-*
"*clature bears the impress of the theoretical ideas in*
"*vogue at the time of its creation. These ideas have*
"*since been greatly modified; the science has ad-*
"*vanced rapidly; its domain is not only considerably*
"*extended, but it has been studied under new*
"*aspects.*"

In some other instances, than this erroneous classification of IRON-ORE, the Treasury Department has acted in accordance with the opinion of the Court, in the case of The U. S. *vs.* 112 Casks of Sugar, 8 Peters, 279, viz: "It is only necessary to observe that the de- "nomination of merchandise subject to the payment "of duties, is to be understood in a *commercial* sense, "although *it may not be scientifically correct.* All "laws regulating the payment of duties are for practi- "cal application to commercial operations, and are to "be understood in a commercial sense."

One instance of such action by the Treasury Department may here be cited, which involved the construction of § 2516, and necessarily supports our contention as to the word "mineral" in § 2504.

It arose on an importation of so-called "Agate," being a "quartz formation known as onyx and jasper." (Syn. Dec. Tr. Dep., 1881, p. 97, No. 4842.) We quote:

"TREASURY DEPARTMENT,
"April 29, 1881.

"*Sir.*—The department is in receipt of your letter of "the 7th instant, transmitting the appeal (2519*g*) of A. "Becker from your decision assessing duty at the rate "of 10 per cent. *ad valorem* on certain so-called agate, "imported per 'Suevia' December 20, 1880, which the "appellant claims to be exempt from duty.

"The appraiser reports, and an inspection of a "sample shows, that the merchandise is not the *un-* "*manufactured agate* which is exempt from duty, but "consists of the quartz formation known as onyx and "jasper, which although comprised within the same "general mineralogical character (*i. e.* quartz forma- "tion) as agate, are nevertheless different articles of "commerce.

"The Department, therefore, decides that the mer-

"chandise, not being otherwise enumerated, and being "in a crude state was properly assessed with duty at "the rate of ten per cent., *ad valorem*, under section "2516, Revised Statutes.

"Your decision is affirmed. This ruling will also "apply to the appeal (2867 g) of Becker Bro's on entry "per 'Mosel' and 'Oder' in March last, transmitted "with your letter of the 27th instant.

"Very Respectfully,

"(sig.) H. F. FRENCH,

"Assistant Secretary.

"Collector of Customs,

"New York."

It is evident that, in the decision (No. 4842) just quoted, the Treasury Department considered, that, although the *article* was a variety of *Quartz*, "*the most abundant of all minerals*" (Worcester's Unabridged Dictionary), it was properly classified as "a raw, or unmanufactured, article," and as such, *subject to duty at ten per centum*, ad valorem, *under section* 2516, *Revised Statutes*. The "*article*" had *no bituminous properties*, and *it was therefore not* "*a mineral and bituminous substance*" any more than the *iron-ore* in question, is.

The distinction between "*ores*" and "*minerals*" is aptly illustrated in the Acts of Congress as may be seen by reference to 44th Congress, Session II, chap. 105, A. D. 1877, 45th Congress, Session II, chap. 359, A. D. 1878, 45th Congress, Session III, chap. 182, A. D. 1879, where, for the Smithsonian Institute, appropriations were granted, "*to duplicate ores, minerals*, and *objects of natural history*."

The language of § 2504, is "mineral and bituminous substances" and we submit, that it was intended to assess a duty of twenty per centum *ad valorem* upon only such *substances* as were *both* mineral and

bituminous, and there are many of such substances known in commerce, and it was to them that the clause refers (Rec., p. 10).

The question is, is IRON-ORE—as the Treasury Department has decided "*a mineral and bituminous substance in a crude state, &c.?*" It has been proven by the plaintiff that the IRON-ORE in question *was not* "*bituminous*" (Record, p. 10), and the defendant did not prove to the contrary.

It is submitted that the IRON-ORE in question is not "*a mineral and bituminous substance*," and that the Court erred in directing a verdict for the defendant, and in not directing a verdict for the plaintiff.

The provision of Section 2516 R. S., upon which this action is based (p. 12), was intended to assess a duty of ten per centum *ad valorem* upon all articles, which were either "raw *or* unmanufactured," but provided also that they were not enumerated or provided for in the act.

It is submitted, that, the IRON-ORE in question is "an unmanufactured article" dutiable under section 2516, R. S., at ten per centum *ad valorem*, and, that in view of this fact the Court erred in directing a verdict for the defendant, and in not directing a verdict for the plaintiff.

In the Statutes at Large, U. K., Vol. IX., 1823-24, 4 Geo. IV., A. D., 1823, c., 72, may be found (p. 329), COPPER-ORE; (p. 352) GOLD-ORE; (p. 340) LEAD-ORE; (p. 354) PLATINA-ORE; (p. 339) IRON-ORE. The act referred to being a Tariff Act, and the *articles* being therein enumerated according to their commercial appellations which were then as now known commercially as ores—it may be particularly noted that "IRON-ORE, the ton containing twenty cwt." was charged with duty, "8 shillings and 9 pence in British currency" (p. 339). "ORE not otherwise enumerated or "described, for every £100 of the value," was charged

with duty, "£20 in British currency," [equivalent to 20% *ad valorem*] (p. 352). "MINERALS not otherwise "enumerated or described, for every £100 of the value "£20 duty in British currency = 20% *ad valorem* (p. 348).

Thus it may be seen that the British Government in 1823-4 acknowledged in its tariff laws the same commercial distinction between ORES and MINERALS as exists to this time—and which distinction this plaintiff offered to prove (Rec., pp. 10, 11).

Further reference to the Statutes at Large, U. K., A. D., 1825-26—6° Geo. IV., c. 111, p. 445, shows that "IRON-ORE the ton," was charged with duty—"5 shillings."

"MINERALS, not otherwise enumerated or described" [20%].

"ORES, not otherwise enumerated or described" [20%].

Thus again was the commercial distinction between ORES and MINERALS recognized.

In the 4° Geo. IV., p. 363, may be found "*Specimens* "of such *Minerals Fossils*, or *Ores*, which are not par-"ticularly enumerated or described, nor otherwise "charged with duty, each specimen not exceeding in "weight 14 lbs. FREE."

When iron-ore is obtained, in any way, from its natural deposit, it is more or less mixed with or enveloped in some mineral or earthy mass, and by whatever means the iron-ore is taken from its natural location, whether by raking or dredging, as is done in procuring bog-iron-ores from ponds, whether by quarrying, shafting, sloping or tunnelling, in either method, more or less of the earthy or mineral substances must be dug or broken, or blasted out with the iron-ore. To rid the iron ore from the *mineral* or earthy substances, various methods are used, sometimes by washing, sometimes by "cobbing," or otherwise "dressing," or

"assorting," so that the iron-ore may be as pure as possible, and, as its *freedom* from all *mineral* or earthy substance is the measure of its value, great care is always taken to separate the ore in whatever form it may occur, so that *all mineral or earthy substances shall be thrown out and only the metalliferous substance*, the *iron-ore*, upon which its value depends, shall be sent to market.

And such unmanufactured metallic or metalliferous substance is the article of commerce which is known, bought, sold and used as the raw or unmanufactured article for making iron under, and by, and by no other than the commercial appellation of IRON-ORE.

In working mines, the contents of the lodes in which IRON-ORE exists, are known in science and in the practice of obtaining IRON-ORE as consisting of two distinct substances. That part of the material which is "mineral" or "earthy" in its substance is called the "gangue."

That part of the material which is "metallic" or "metalliferous" in its substance is called the "IRON-ORE."

In Davies' Metalliferous Minerals and Mining, Crosby, Lockwood & Co., London, 1881, it may be seen, p. 415, GANGUE: "*The non-metallic material, filling lodes.*"

In Worcester's Unabridged Dictionary, it may be seen that "GANGUE" is "*the mineral substance which* either encloses or usually *accompanies any metallic ore* in the vein.

In Davies', as before mentioned, p. 422, it may be seen that "ORE" is "*the substance specially containing metal.*"

It therefore depends upon the skill and care of the laborers employed in obtaining iron-ore from its natural location, to assort the material and to throw

out and the "gangue" or *mineral* substance into one place, and all the "ore" into another place.

In no sense, can IRON-ORE be said to be even "a mineral substance in a crude state," for, as shown from Davies' work as quoted, and from Worcester's Dictionary, *the "mineral substance" is the gangue; the non-metallic material*, and that the "*ore*" *is the "metallic" or "metalliferous"* substance.

The value of IRON-ORE, unquestionably and indisputably, depends upon its purity and contents of metallic or metalliferous substance, and the extent of its freedom from any mineral or earthy substance.

Conclusion.

The judgment of the Circuit Court should be reversed.

B. F. LEE,

Of Counsel.

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In the Supreme Court of the United States.

OCTOBER TERM, 1885.

WILLIAM D. MARVEL, PLAINTIFF IN error,
vs.
EDWIN A. MERRITT, LATE COLLECTOR of the port of New York.
} No. 72.

BRIEF FOR THE UNITED STATES.

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No. 72.

BRIEF FOR THE UNITED STATES.

This suit was brought in the court below to recover back duties paid under protest. In 1879 William D. Marvel imported certain quantities of iron ore into the port of New York. The importer claimed that the iron ore imported was dutiable under the provisions of section 2516 of the Revised Statutes, and was subject only to a duty of 10 per centum ad valorem as an unmanufactured article, while the collector exacted a duty of 20 per centum ad valorem. The duties were paid according to the demand of the collector, and this suit was brought to recover back the excess.

On the trial, the circuit court instructed the jury to find a verdict for the defendant, and to reverse the judgment upon that verdict this writ of error was brought. The question involved in the suit arose under the tariff act of

1874. The iron ore, not being specified in said act, was classified as a mineral substance, under the clause in schedule "M" for "mineral and bituminous substances in a crude state, not otherwise provided for, 20 per cent. ad valorem." In other words, iron ore, not being provided for by its trade name or commercial designation, was, by reason of section 2499 of the Revised Statutes, and its character, material, &c., enumerated as a "mineral substance."

Section 2499 provides:

> There shall be levied, collected, and paid on each and every non-enumerated article which bears a similitude, either in material, quality, texture, or the use to which it may be applied, to any article enumerated in this title as chargeable with duty, the same rate of duty which is levied and charged on the enumerated article which it most resembles in any of the particulars before mentioned.
>
> And if any non-enumerated article equally resembles two or more enumerated articles, on which different rates of duty are chargeable, there shall be levied, collected, and paid on such non-enumerated article the same rate of duty as is chargeable on the article which it resembles paying the highest duty.
>
> And on all articles manufactured from two or more materials the duty shall be assessed at the highest rates at which any of its component parts may be chargeable.

This section is a re-enactment of section 20 of the act of August 30, 1842, c. 270, 5 Stat., 565, as to which this court said, in Stuart *vs.* Maxwell, 16 Howard, 150:

> It was designed to afford rules to guide those employed in the collection of revenue in certain cases

likely to occur, not within the letter, but within the real intent and meaning of the laws imposing duties, and thus to prevent evasions of those laws. Manufacturing ingenuity and skill have become very great, and diversities may be expected to be made in fabrics adapted to the same rules, and designed to take the same places as those specifically described by some distinctive marks, for the mere purpose of escaping from the duty imposed thereon. And it would probably be impossible for Congress, by legislation, to keep pace with the results of these efforts of interested ingenuity. To obviate, in part at least, the necessity of attempting to do so this section was enacted.

And again, at page 162:

> By providing for a particular thing it has provided for all other things which the law declares to be the same. It is only upon this ground that sheer and manifest evasions can be reached. Suppose an article is designed to serve the uses and takes the place of some article described, but some trifling or colorable change is made in the fabric or some of its incidents. It is new in the market. No man can say he has ever seen it before, or knows it under any commercial name; but it is substantially like a known article which is provided for. The law of 1842 (Rev. Stat., Sec. 2499) then declares that it is to be deemed the same and to be charged accordingly; that the act of 1846 (the tariff act then in force) has provided for it under the name it resembles.

In the case of Arthur *vs.* Fox (108 U. S. Repts., p. 128) this court said:

> If an article is found not enumerated in the tariff laws, then the first inquiry is whether it bears a similitude, either in material, quality, texture, or the